



**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
(Set up by an Act of Parliament)

**DISCIPLINARY COMMITTEE [BENCH-I (2020-2021)]**  
**[Constituted under Section 21B of the Chartered Accountants Act, 1949]**

**ORDER UNDER SECTION 21B(3) OF THE CHARTERED ACCOUNTANTS ACT, 1949 READ WITH RULE 19(1) OF THE CHARTERED ACCOUNTANTS (PROCEDURE OF INVESTIGATION OF PROFESSIONAL AND OTHER MISCONDUCT AND CONDUCT OF CASES) RULES, 2007.**

**In the matter of:**

**Joint Director of Income Tax (Inv.), New Delhi**  
**-Vs-**  
**CA. Ravi Agarwal (M. No.407938), Ghaziabad**  
**[PR-98/11-DD/14/12-DC/332/14]**

**MEMBERS PRESENT:**

**CA. Nihar Niranjan Jambusaria, Presiding Officer**  
**Shri Jugal Kishore Mohapatra, I.A.S. (Retd.) (Government Nominee)**  
**Ms. Rashmi Verma, I.A.S. (Retd.) (Government Nominee)**  
**CA. G. Sekar, Member**  
**CA. Pramod Jain, Member**

1. That vide report dated 29<sup>th</sup> January, 2019, the Disciplinary Committee has inter-alia held **CA. Ravi Agarwal (M.No.407938)** (hereinafter referred to as the "**Respondent**") **GUILTY** of professional misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

2. That pursuant to the said report, an action under Section 21B (3) of the Chartered Accountants (Amendment) Act, 2006 was contemplated against the Respondent and communication dated 5<sup>th</sup> March, 2020 was addressed to him thereby granting an opportunity of being heard in person and/or to make a written representation before the Committee on 17<sup>th</sup> March, 2020 at New Delhi.

3. The Committee noted that on 17<sup>th</sup> March, 2020, the Respondent was not present. However, he vide letter dated 16<sup>th</sup> March, 2020 made his written representations on the said report.

4. Upon perusal of the written representations, the Committee observed that the Respondent has stated that he was not given opportunity to examine Ex- CFO of M/s. Frontline (NCR) Business Solutions Private Limited and cross examine the Complainant. A brief of the representations made by the Respondent is as under:-



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i) He has already suffered for 365 days from the date of findings which itself is sufficient punishment for the Respondent.

ii) He has replied all the contentions of the Complainant and the Hon'ble Disciplinary Committee in his all earlier replies. The Complainant failed to give any clinching reply. The Respondent stated that the Complainant accepted that there is no variation / difference in two tax audit reports.

5. The Committee has considered the reasoning (s) as contained in paras no.1 to 11 and 12 of the Disciplinary Committee report holding the Respondent Guilty of professional misconduct vis-à-vis written representations of the Respondent on the findings of the Disciplinary Committee.

6. Keeping in view the facts and circumstances of the case, material on record and written representations of the Respondent made before it, the Committee is of the view that the professional misconduct on the part of the Respondent is established. Accordingly, the Committee orders that **name of the Respondent, CA. Ravi Agarwal (M.No.407938) be removed from the Register of Members for a period of 1 (One) year and imposed a fine of Rs. 1 lac (Rupee One lac only) upon the Respondent i.e. CA. Ravi Agarwal (M.No.407938) to be paid within 30 days of receipt of this order.**

sd/-

**(CA. NIHAR NIRANJAN JAMBUSARIA)**  
**PRESIDING OFFICER**

(approved and confirmed through e-mail)

**(SHRI JUGAL KISHORE MOHAPATRA)**  
**GOVERNMENT NOMINEE**

sd/-

**(MS. RASHMI VERMA)**  
**GOVERNMENT NOMINEE**

(approved and signed)

**(CA. G. SEKAR)**  
**MEMBER**

sd/-

**(CA. PRAMOD JAIN)**  
**MEMBER**

Certified to be true copy

  
Anurag Sharma

Assistant Secretary,  
Disciplinary Directorate

The Institute of Chartered Accountants of India,  
ICAI Bhawan, Vishwas Nagar, Shahdra, Delhi-110032

**CONFIDENTIAL**

**DISCIPLINARY COMMITTEE [BENCH-III (2018-19)]**

**[Constituted under section 21B of the Chartered Accountants Act, 1949]**

**Findings under Rule 18(17) of the Chartered Accountants (Procedure of Investigations of Professional and Other Misconduct and Conduct of Cases) Rules, 2007**

**File no.: PR/98/11-DD/14/12-DC/332/2014**

**In the matter of :**

**Shri Nimesh Yadav  
Jt. Director of Income Tax (Inv)  
Unit-II(2), R. No.254, E-2, ARA Centre  
Jhandewalan Extn.  
New Delhi – 110 055**

**... Complainant**

**Versus**

**CA. Ravi Agarwal (M. No. 407938)  
C-213, Opp. Silver City Mall  
Bulandshahar Road  
GHAZIABAD – 201 001**

**... Respondent**

**Members Present :**

**Shri Naveen Kumar Gupta, Presiding Officer  
Smt. Anita Kapur, (Govt. Nominee)  
Shri Ajay Mittal, IAS (Retd.), (Govt. Nominee)  
CA. Shyam Lal Agarwal, Member  
CA. Sanjay Kumar Agarwal, Member**

**Parties Present:**

- (1) Smt. Vibhooti Malhotra, Advocate – Counsel for the Complainant**
- (2) Shri Sandeep Manaktala – Counsel for Respondent**

**Date of Final Hearing: 12<sup>th</sup> November, 2018**

**Place of Final Hearing: New Delhi**



**Allegations of the Complainant, Shri Nimesh Yadav, Jt. Director of Income Tax (INV) Unit-II(2), New Delhi:**

1. In the instant case, it was alleged that during the survey operation carried in the premises of the Respondent at his Bareilly Office, no audit memo, audit queries, pre-audit bills, etc. relating to tax audit of M/s. Frontline (NCR) Business Solution Pvt. Ltd (hereinafter referred to as the **Company**) for F.Y. 2007-08 to 2009-10 were found leading to the conclusion that the Respondent had not audited books of accounts of the said Company for the stated periods. It was stated that the E>Returns filed for the said Company for the A.Y. 2008-09 to 2010-11 on 26.03.2009, 15.11.2010, and 31.03.2011 respectively had revealed that the Respondent had audited the accounts of the Company for the said years and when the statement of Sh. Manu Pranav, CFO of the Company was recorded on oath and he was asked to produce the audited books of accounts and audit report of the Company but he denied having received any audited books of accounts of the Company or any tax audit report. It was thus alleged that the Respondent had not audited books of account of the Company for F.Y. 2007-08 to 2009-10.

**Proceedings :**

2. At the time of hearing on 12<sup>th</sup> July 2017, the Committee noted the presence of the Counsel for Respondent. The Committee further noted that representative from the Complainant department was not present. Since the Counsel for Respondent was present, the Committee decided to proceed ahead in the matter. On being asked whether the charges as contained in the Prima Facie Opinion of the Director (Discipline) may be taken as read, the Counsel for Respondent stated that he was aware of the charges and the same may be taken as read. Further, he pleaded not guilty on behalf of the Respondent. The Committee directed the Counsel to present his defence in respect of the allegations leveled against the Respondent.

Since the Counsel for the Respondent relied on the documents and evidences of the Company concerned, the Committee decided to summon Shri Manu Pranav, the then Chief Financial Officer and Shri Pushpesh Sinha ,the Director of the Company as witness of the Committee whose statement on oath was recorded by the Complainant Department.



Thereafter, the Committee directed the Counsel to co-operate with it by providing latest address and the contact details of the persons to be summoned as witness in the next hearing. Accordingly, the Committee adjourned the matter for the future date and decided to summon the aforesaid persons as the Committee's witness in its next hearing. The Committee also directed that the Respondent be asked to furnish his working papers for said prepared by him while carrying out the audit of the entity. The hearing in the matter was, thereafter, adjourned.

3. At the time of hearing on 22<sup>nd</sup> May 2018, the Committee noted that the Complainant's Counsel and Counsel for the Respondent were present. The Committee drew the attention of the parties to the change in the constitution of the Committee and gave an option to the parties as to whether they wanted to proceed de-novo with the case or the Committee could proceed with the case from where it was left earlier. The Counsel for Complainant stated that since she had been engaged recently, she would present the case before the Committee. On being asked from the Counsel for Respondent, he stated that he had no objection and the Committee might go ahead with the matter. Thereafter, the Committee asked the Counsel for Complainant to present the case and she presented the case before the Committee. After hearing both the parties, the Committee directed the Complainant and the Respondent to provide the following documents to the Committee at its next hearing :

**From the Respondent:**

- (i) To present complete set of original audit working papers; by 6th June, 2018 and
- (ii) Copies of such audit working papers duly certified by the Respondent

The Complainant Department was directed to submit within next 15 days to the Bench as well as to the Respondent the following:-

- i) Copies of tax audit reports as available with it so that these could be compared.

Thereafter, based on the documents available on record and after considering the oral and written submissions made by both the parties, the Committee adjourned the matter for a future date. Accordingly, the case was part-heard and adjourned with directions to





the Counsel for the Complainant as well as that for the Respondent to submit the aforesaid documents within the prescribed time period.

4. At the time of hearing on 23<sup>rd</sup> October 2018, the Committee noted that the Counsel for Respondent was present. The Committee further noted that neither Complainant-Department or its representative nor any witnesses as called for were present before the Committee at the time of hearing. The Office informed that the Counsel for the Complainant had indicated her pre-occupations in the Court for some other matter and she had assured to send somebody else to appear before the Committee. However, at the time of hearing of the case, the Committee noted that no one was present to represent the Complainant-Department.

The Committee thereafter informed the Counsel for the Respondent that the composition of the Committee had undergone a change and, therefore an option of de-novo hearing in the matter was available to him. The Counsel for the Respondent requested to grant de-novo hearing. The Committee accepted the request of the Counsel of the Respondent and accordingly, hearing in the matter was initiated afresh. The Committee asked the Counsel for the Respondent whether he wished the charges to be read out or these could be taken as read. The Counsel stated that he was aware of the allegations raised against the Respondent and the same might be taken as read. On being asked, as to whether the Respondent pleaded guilty, he replied that he did not plead Guilty and opted to defend the case.

Thereafter, the Counsel for Respondent made his submissions in the matter before the Committee. Based on the documents available on record and after considering the oral and written submissions made by the Counsel, the Committee enquired from the Counsel for Respondent about the submissions of documents which were sought during the previous hearing. The Counsel for the Respondent submitted certain documents. On examination of the same, the Committee directed the Counsel for Respondent to further produce the following information/documents by 10th November, 2018:

- (i) Management representation letter
- (ii) Initial set of the draft financial statements received by the Respondent



- (iii) Final set of the financial statements and difference of when compared with initial set of draft financial statements
- (iv) Set of financial statements duly signed by the Board of Directors
- (v) AGM resolution duly signed by Board of Directors adopting the accounts.
- (vi) Confirmation whether the audited financial statements were filed with the ROC.
- (vii) Copy of all working papers to substantiate that the audit was actually conducted by the Respondent
- (viii) Inspection report from an independent professional to verify that financial statements in ROC records are the one audited by the Respondent.

The Counsel for the Respondent was directed to submit the documents required well in advance of hearing in the matter. The Committee, therefore, adjourned the case as being part-heard with direction to the Respondent to submit the aforesaid documents by 10th November 2018. Further, the office was directed to write a letter to Chairman, CBDT informing him absence of its representative in hearings of the matter referred by the Department.

5. At the time of hearing on 12<sup>th</sup> November, 2018 the Committee noted that the Counsel for Complainant and the Counsel for Respondent were present before the Committee. Although the Respondent was not present, the Committee decided to proceed ahead in the matter as the Counsel for the Respondent was present. The Committee also noted that the Committee's witnesses viz. Shri Manu Pranav, the then Chief Financial Officer and Shri Pushpesh Sinha, the Director of the Company who were issued the summons to appear and depose before the Committee were not present.

At the initiation of the proceedings, the Counsel for the Respondent submitted copies of certain documents. One set of the such documents was also served on the Complainant at the time of hearing. The Committee thereafter read out the list of various documents which the Respondent was directed to submit in his defence before the Committee. The Counsel for the Respondent submitted that out of the same, certain documents could not be made available to the Committee. The Committee thereafter expressed its displeasure towards the attitude of the Counsel for the Respondent as despite being

directed at the time of previous hearings, he could not arrange the required documents, which had resulted in non-compliance with the directions of the Committee. The Counsel for the Respondent was finally asked to produce the documents as already directed within 7 days.

The Committee thereafter examined the Counsel for the Respondent and he made his submissions in the matter. The Counsel for the Complainant was also examined and she was thereafter directed by the Committee to submit copies of the following documents within 7 days from the date of the hearing with copy sent to the Respondent so as to enable him to submit his reply on the same within next 7 days from the date of receipt :

- (i) Copies of the Assessment Orders for relevant years.
- (ii) Copies of the Tax Audit Reports for relevant years.
- (iii) Submissions as to whether any penalty was imposed on the Assessee under Section 271(B) of the Income Tax Act 1961 for the delayed filing of the Tax Audit Reports. In case of the same, copy of the order passed to the above effect may also be provided.
- (iv) Final submissions, if any.

Thereafter, based on the documents available on record and after considering the oral and written submissions made by the parties and the documents as sought from the parties, the Committee concluded the hearing in the matter.

**Findings of the Committee:**

6. The Committee noted the search and seizure proceedings were conducted under Section 132 of the Income Tax Act, 1961 against the Company on 05.04.2011, at B-48, Narina Industrial Area, Phase-II New Delhi whereat no tax audit report in respect of the said company was found. Thereafter, the statement of Sh. Manu Pranav, CFO of the Company, was recorded on oath by the Complainant under the provisions of Section 132(4) of the Income Tax Act, 1961 wherein specifically in response to questions 8 and 9, he stated as on 05.04.2011 that the Company had not received the tax audit report of the from the Respondent. It further noted that ,thereafter, a survey operation under Section 133A of the Income Tax Act, 1961 was conducted on the business premises of



the Respondent on 21.04.2011, located at 238, Ratandee Complex, Chowk Chauraha, Bareilly (UP) and during the course of the said survey also, no audit memos, queries or working papers in respect of audit of the company was found. Thus the basic charge alleged against the Respondent was that although the E>Returns of the Company were filed for A.Y. 2008-09 to 2010-11 on 26.03.2009, 15.11.2010 and 31.03.2011 respectively but Respondent had not actually audited books of account of the Company.

7. Further, it noted that the Respondent in his submission under Section 133A of the Income Tax Act, 1961 given before the Assistant Director of Income Tax (INV), had admitted that he had conducted the Audit of the Company. However, his contention was that the pre-audit briefs and notes were prepared and kept in the head office of the Company and he had handed over all the papers related to the audit /notes/ audit memos/etc, objection raised by him to the Company (Director/CFO). Further, on being asked about the violation of the provision u/s 40A(3) of the Income Tax Act, 1961 noticed in the set of books of accounts provided to him for conducting Audit, he had stated that no such violation was noticed by him during audit.

8. The Respondent in his written submissions had also stated that the audit was properly conducted by him and /or by his staff at the Office of the company and the Audit Report was finalized on 12.9.2010. Considering the volume and frequency of his visits, he had kept his Audit Working papers and Audit files in an almirah at the office of the Company at Rajendra Place, New Delhi which used to remain under Respondent's control and possession and /or at his Ghaziabad office. The audit was completed by September 2010, and the Audit Working Papers and the Audit Files kept on lying in that office. He also stated that simply because the Audit working papers were not found at the time of Survey, it could not be said that audit was not conducted properly and further he was not obliged to produce his audit working papers to the Income Tax Authorities unless properly summoned as per the Income Tax law and rules. He further argued that if the company had not received the Tax Audit Report on or before 5.4.2011, being the date of recording of statement, then the Income Tax return should not have been filed on 31.3.2011. The return of income was verified by the Director of the Company and it contained all the particulars relating to Form 3CD certified by the Respondent. The

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Respondent also produced a statement of the Directors of the Company along with the Board of Directors Report dated 12.09.2010 filed with Registrar of Companies to substantiate that the tax audit was conducted by him and the tax Audit report was received by the Company in time.

9. The Committee further noted that the Complainant Department stated that the copies of the tax audit report of the company available on record were for Assessment Year 2009-10 and 2010-11 which were submitted by the Respondent vide his letter dated 23.06.2011. As regard the fate of the assessment of the Company in pursuance of the search conducted, the Complainant Department submitted that on receipt of notice under Section 153A of the Income Tax Act, 1961, the said Company had filed a settlement application before the Hon'ble Settlement Commission which was allowed to be proceeded with by means of Hon'ble Commission's order dated 07.04.2014. Finally, by means of an Order dated 29.06.2015, the income of the company was settled. Therefore, the question of imposition of penalty on account of default in submission of tax audit report did not arise.

10. The Committee perused the Statement recorded under Section 133A of the Income Tax Act 196 on 21.04.2011 and noted the response to certain questions posed by the Department stated as under:

*"Q.3: Pl. Specify where do you audited the above companies books of A/cs and also of the persons who audits the books of A/c with name of books audited and also name the media on which the books of A/c prepared thereof?"*

*Ans: we audited the books of A/c maintain at previously E-47, Naraina Vihar and later at B-48, Naraina Vihar New Delhi. My partner Ravi Aggarwal personally visited the office for the purpose of audit almost weekly. The books of A/cs are maintain on "TALLY" software which are checked along with the vouchers and other evidences pertaining to the Head Offices & Branches. All the books of A/c such cash book, ledger etc.*





Q.6: Pl. state whether you or your partner have any data in any form such as loose paper/file/register/laptop at this premises?

Ans: There is no hard copy of books of A/cs of Frontline Group however there are some data on our office PC the printout if the date is being provided to you.

.Q.8: During the course of search operations u/s 132 of the I.T. Act 1961 on 05/04/2011 at the premises, B-48, Naraina Vihar, Indl. Area, New Delhi no audit memos, note, brief, working paper, objection raised, deficiencies raised by you was found. Pl. explain?

Ans.: We have handed over all the papers relating to audit note/ audit memos etc., objection raised by us to the assessee (Director/CFO) and most of the queries has been solved immediately through discussion with the concerned person."

11. The Committee further noted that though the Respondent had brought on record a copy of the letter dated 16<sup>th</sup> June 2014 written by the Director of the Company to the Respondent wherein it was confirmed that the Financial Statements along with the Audit reports for the F.Y. 2007-2008, 2008-2009 and 2009-2010 and the Tax Audit reports for the A.Y. 2009-2010 and 2010-2011 had been received by the Company from the Respondent and the e>Returns were filed for the Company for the said three years but the fact remained that there were clear contradictions noted in the statement on oath made by the Respondent. For instance, on the one hand the Respondent had stated that he had audited the books of accounts at E-47 and B-48 Naraina Vihar, New Delhi but on the same location i.e., B-48, Naraina Vihar, Indl. Area, New Delhi no audit memos/note/brief or the working papers were found. Further, in its submission to the Committee, the Respondent had stated to put his working papers separately in the Company's premises in an almirah at Rajendra Place which was under his control. The Committee, viewed, that the facts being supplied by the Respondent appeared to be unreasonable and contradictory. The Committee also noted that the Respondent had argued that when e>Returns were filed, the tax audit report were bound to have been filed with e>Returns by the Company. However, the Complainant department had received the tax audit reports of the Company in relation to e>Returns from the Respondent vide his letter dated 23.06.2011. Accordingly, it was viewed that no audit was conducted by the

Respondent while e-returns were filed and the reply/stand taken by the Respondent while submitting his defence in the extant matter appeared to be an afterthought and a concocted story. The Committee further noted that despite seeking copy of such audit working papers duly certified by the Respondent repeatedly at various hearings held in the case, the Respondent failed to produce the same. In light of the same the Committee was of the considered view that although the tax audit reports were received by the Complainant department but the Respondent had failed to produce the working papers before it to corroborate his defense that he had duly conducted the audit before filing of the e-return.

**Conclusion :**

12. Thus, in conclusion, in the opinion of the Committee, the Respondent is **GUILTY** of Professional Misconduct falling within the meaning of Clauses (7), (8) and (9) of Part I of the Second Schedule to the Chartered Accountants Act, 1949.

**Sd/-**  
**(CA Naveen N.D Gupta)**  
**Presiding Officer**

**Sd/-**  
**(Anita Kapur)**  
**Member (Govt. Nominee)**

**Sd/-**  
**[Ajay Mittal, IAS (Retd.)]**  
**Member (Govt. Nominee)**

**Sd/-**  
**(CA. Sanjay Kumar Agarwal)**  
**Member**

**Sd/-**  
**(CA. Shyam Lal Agarwal)**  
**Member**

**Date : 29<sup>th</sup> January, 2019**

**Place : New Delhi**

**Certified True Copy**

  
**Mukesh Kumar Mittal**  
**Assistant Secretary**  
**Disciplinary Directorate**

**The Institute of Chartered Accountants of India**  
**ICAI Bhawan, I.P. Marg, New Delhi-110 002**